No. 250

In the Supreme Court of the United States

OCTOBER TERM, 1955

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE BABCOCK AND WILCOX COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

SIMON E. SOBELOFF,
Solicitor General,
Department of Justice, Washington 25, D. C.
THEOPHIL C. KAMMHOLZ,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
RUTH V. REEL,
Attorney,
National Labor Relations Board,
Washington 25, D. C.

INDEX

CITATIONS

Cases:

Cases—Continued

Cases—Continued

Miscellaneous—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 250

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE BABCOCK AND WILCOX COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 249–253) is reported at 222 F. 2d 316. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 50–82) are reported at 109 N. L. R. B. 485.

JURISDICTION

The judgment of the court below was entered on July 12, 1955 (R. 254). The petition for a writ of certiorari was filed on July 21, 1955, and was granted on October 10, 1955 (R. 254). The jurisdiction of this Court rests on 28 U. S. C.

1254 and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether an employer violates Section 8 (a) (1) of the National Labor Relations Act by prohibiting nonemployee union organizers from distributing union literature on his plant parking lot during the employees' free time, where it is unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant.

2. Whether the Board's order is valid and proper in so far as it directs respondent to cease and desist not only from the unfair labor practice found, but also from any "like or related" conduct infringing upon its employees' exercise of rights guaranteed by Section 7 of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*), are set forth in the Appendix, *infra,* pp. 48–50.

STATEMENT

I

The facts

Respondent, which manufactures boilers and auxiliary products, has a plant located on a 100-acre tract approximately one mile from the town

limits, and several miles from the center, of Paris, Texas, a community of 21,000 people (R. 59–60, 66–67; 102, 104, 117, 215). The plant employs about 500 workers on a 3-shift basis. About 40 percent of these employees live in Paris. The remaining 60 percent live in widely scattered small communities or in the countryside within a radius of 30 miles of the plant. (R. 52, n. 3, 67–68; 100–102, 211–213, 215–216). Apart from taxi service, there is no public transportation to the plant (R. 67; 213–214, 102–103). Accordingly, more than 90 percent of the employees drive to work in private automobiles and park in a parking lot which is owned by the company and is adjacent to, but outside of, the fenced-in plant area (R. 67; 125, 171, 182, 224–225). In order to enter this working area from the parking lot, employees must pass a guarded gatehouse and punch a time clock (R. 67; 224, 171–172, 124).

The parking lot is located about 100 yards from the state highway. A driveway, 30 feet wide and 100 yards long, runs from the highway to the parking lot. The driveway is located on company property except where it crosses a public right-of-way which extends 31 feet from the highway (R. 67; 224, 119–127). There is no traffic light at the intersection of the driveway and the highway, and no regular police direction (R. 68). Posted along the highway as it passes respondent's premises are state highway signs reading "no parking"

and "speed limit 60 miles per hour" (R. 68; 224, 173).

On three occasions during the summer of 1953, representatives of the United Steelworkers of America, CIO (herein called the Union), which was seeking to organize the plant, distributed union literature to employees leaving the plant on the driveway near the intersection with the highway (R. 69–71; 175–176). As a consequence a traffic jam resulted at the intersection, causing cars to crowd bumper to bumper for some distance up the driveway and the drivers to sound their horns and attempt to enter the highway three cars abreast. Upon noting this condition on one occasion, respondent's personnel director and its gateman proceeded to the fron of the line, motioned the front cars to move along, and shouted to the drivers not to block the driveway. (R. 63–64, 69–70; 112–115, 139–146, 157–171, 174–175). Following the distribution on another occasion, local and state highway authorities, called by respondent, instructed union representatives that "distribution of union information in leaflet form at the point where the state highway links with [respondent's] parking lot road is hazardous to traffic, and must be discontinued" (R. 52, n. 3, 70; 219, 183, 126).

Thereafter, the Union requested permission to distribute leaflets on or near the parking lot during the employees' free time. Respondent re-

jected the request, giving as reasons for its action that it had refused to grant similar permission to businessmen and that such distribution would litter the property (R. 70–71; 116, 118, 107, 176, 183, 219–220). At the beginning of plant operations at Paris, respondent had promulgated, and thereafter enforced, a rule prohibiting distribution of literature on its parking lot either by employees or by any outsiders (R. 68–69, 71, 51–52; 203, 186–187, 215, 221–223).

Concurrently with its efforts to distribute literature in the immediate vicinity of the plant, the Union also sought to communicate with respondent's 500 employees away from the plant area. On three occasions during the summer of 1953 the Union mailed literature to approximately 100 employees, and in addition talked with some of the employees on the streets of Paris, at their homes and over the telephone. Some of the visits to the employees' homes entailed travel to communities 11, 21, 26, and 30 miles from Paris. About 60 percent of the employees have telephones, of which about 90 percent are on the Paris telephone exchange. (R. 68, 71–72; 182, 99–102, 132–136, 211–212).

II

The Board's conclusions and order

The Board, adopting the findings of the Trial Examiner (R. 50–53), concluded that the underlying issue in this case was the proper accommo-

dation between the employer's right to control the use of his property and the employees' right to receive information about unionization, essential to the exercise of their statutory right to self-organization (R. 73). Proceeding under the principles established in *National Labor Relations Board* v. *LeTourneau Company of Georgia*, 324 U. S. 793, where this Court held that an employer prohibition against distribution of union literature by employees on a company parking lot is invalid if it creates an unreasonable impediment to the employees' freedom of communication, the Board concluded that, in the absence of special circumstances relating to plant production or discipline, an employer is required to grant non-employee organizers access to company parking lots if access to the employees on public property in the immediate vicinity of their place of work is impossible or unreasonably difficult (R. 73–74).

The Board, adopting the Trial Examiner's findings, found that it was neither safe nor practicable for union representatives to distribute union literature on the company driveway or at the intersection of the driveway and the public highway (R. 74–76). It rejected (R. 76–77) respondent's contention that its parking lot prohibition did not constitute an unreasonable impediment to self-organization because the Union had other means of communicating with the employees—such as through the mails, on the streets of Paris, at their homes, and over the telephone.

Viewing the place of work and the area adjacent thereto as the most practical and effective place for the communication of information and opinion concerning unionization, the Board concluded that it was "no answer to suggest that other means of disseminating Union literature are not foreclosed" (R. 76). The Board further found that respondent had failed to show any special circumstances establishing that the prohibition against distribution on the parking lot was necessary in order to maintain plant production or discipline (R. 77). Accordingly, it concluded that respondent's refusal to permit the Union's representatives to distribute literature on the parking lot was an unreasonable impediment to the employees' right to self-organization, and hence a violation of Section 8 (a) (1) of the Act (R. 77).

The Board ordered respondent to cease and desists from prohibiting distribution of union literature by union representatives on its parking lot and along the walkways leading from its gatehouse to the parking lot and driveway, and from any like or related conduct interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act (R. 53–57). Affirmatively, the Board ordered respondent to rescind its no-distribution rule to the above extent and to post appropriate notices. The Board's order (R. 53) also provides, however, that respondent may impose reasonable and nondiscriminatory regulations in the interest

of plant efficiency and discipline, but not so as to deny access to union representatives who desire to distribute union literature to the employees.

III

The decision of the court below

The court below (R. 249–253) set aside the order of the Board, distinguishing *National Labor Relations Board* v. *LeTourneau Company of Georgia*, 324 U. S. 793, on the ground that the distributors there, unlike those in the instant case, were employee members of the union who had been disciplined by their employer for violation of a no-distribution rule. The court stated that Section 7 of the Act gives nonemployees the right to enter upon an employer's premises for the purpose of engaging in union activity in two general situations: (1) where there is anti-union discrimination, as in *National Labor Relations Board* v. *Stowe Spinning Company*, 336 U. S. 226, and (2) where union organization must proceed upon the employer's premises or be seriously handicapped because the employees live on company property, as in *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147 (C. A. 6). Noting that the instant case presented neither of these situations, the court held that here "no rights of employees have been invaded or abridged" by respondent (R. 252). The court further stated (R. 250) that while, in view of its disposition of the case, it was unneces-

sary to discuss or deal with the point, it nevertheless agreed with respondent that the Board's order was, in any event, too broad in scope in so far as it directed respondent to cease and desist from "any like or related" infringement upon its employees' rights under Section 7 of the Act.[1]

SUMMARY OF ARGUMENT

I

In *National Labor Relations Board* v. *LeTourneau Co.*, 324 U. S. 793, this Court held that an employer's prohibition against the distribution of union literature by employees on a company parking lot unlawfully interfered with the rights of self-organization guaranteed employees by Section 7 of the Act because it constituted an unreasonable impediment to the employees' exercise of those rights. The principles upon which that decision rests sustain the Board's ruling here that a similar prohibition against nonemployee union

[1] Section 1 (b) of the Board's order (R. 53–54) directs respondent to cease and desist from:

"Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act."

organizers is an unreasonable and unlawful impediment to the employees' exercise of Section 7 rights.

As this Court recognized in *LeTourneau,* in order that employees may effectively exercise the rights they are guaranteed under the Act, there must be available to them adequate channels of communication for the receipt and transmittal of organizational information, both oral and written. On the other hand, due recognition must be given to the employer's property and legitimate business interests. "Like so many others, these rights are not unlimited in the sense that they can be exercised without regard to any duty which the existence of rights in others may place upon employer or employee. Opportunity to organize and proper discipline are both essential elements in a balanced society." 324 U. S. at 798. Therefore, where an employer seeks to justify a rule prohibiting organizational activities on his premises, the critical issue before the Board is whether, on balance, the injury to the employees' organizational interests outweighs the injury which the employer would sustain if the rule were abrogated.

Proceeding under the principles approved in *LeTourneau,* the Board in the instant case assessed the impact which the prohibition against the distribution of union literature by nonemployee organizers on the plant parking lot has upon the employees' exercise of their statutory

rights. It recognized that adequate opportunity for employees to receive information from outside organizers is an indispensable attribute of the right to self-organization and that this right can not, as a practical matter, be effectively realized unless the union has access to the employees in the area in the immediate vicinity of the plant. The Board found that there is little, if any, prejudice to the employer's legitimate business interests in permitting distribution of union literature on the parking lot by nonemployee organizers. Weighing these competing interests, the Board struck a balance in favor of the employees' interest in the effective exercise of their statutory rights. The accommodation thus made by the Board is, as in *LeTourneau*, an appropriate "adjustment between the undisputed right of self-organization assured to employees under the * * * Act and the equally undisputed right of employers to maintain discipline in their establishments." 324 U. S. at 797–798.

The circumstance that the employer's prohibition is directed against nonemployee organizers rather than against employees affords no basis for the view of the court below that the prohibition does not invade or abridge any right of the employees. The statutory guarantee of self-organization for purposes of collective bargaining includes not only the right of employees to discuss and be informed concerning organiza-

tional matters, but also the necessarily correlative right of a union and its representatives to discuss with employees the advantages of self-organization. Employee rights are no less involved merely because organizational information is disseminated by the union on its own initiative rather than by the employees. In either case the distributors are pursuing the same end, namely, to advise the workers at the plant of their rights under the Act and the purported advantages of unionization. And to the extent that otherwise appropriate channels of communication between employees and union organizers are blocked, the employees' statutory rights are impaired.

An employer may not restrict access to his employees on a plant parking lot solely on the ground that his property rights entitle him to exclude "trespassers." As this Court has recognized, the rights granted to employees under the Act may on a proper showing supersede the employer's dominion over the property on which such activities occur.

The view of the court below—that, unless employees work and live on company property, lack of access to them at or near the plant does not substantially impede the exercise of their statutory rights—not only misconceives this Court's decision in *LeTourneau*, but also fails to take into account the serious and sometimes almost insurmountable practical difficulties which lack of access to the employees at or near the plant imposes

upon the employees' effective exercise of their statutory rights. In *LeTourneau*, access to the employees at places other than the vicinity of the plant was not foreclosed; nevertheless, this Court concluded that the ban against distribution on the parking lot seriously impeded the employees' exercise of the rights guaranteed by the Act. In so concluding, the Court implicitly recognized that the place of work is from a practical standpoint the most effective place for the communication of information concerning unionization and that it was no answer to say that access to the employees elsewhere was possible.

II

The Board's order is valid and proper. The order requires respondent to cease and desist from enforcing its no-distribution rule and from engaging in "any like or related acts" which encroach upon the employees' exercise of the rights guaranteed by the Act. In enjoining the commission of "like or related" unfair labor practices, the order fully comports with controlling decisions of this Court. "Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 436.

ARGUMENT

I

The Board properly found that respondent violated Section 8 (a) (1) of the Act by prohibiting union organizers from distributing union literature on its plant parking lot during the employees' free time

In *National Labor Relations Board* v. *LeTourneau Company*, 324 U. S. 793, this Court held that an employer prohibition against the distribution of union literature by employees on a company parking lot unlawfully interfered with the rights guaranteed employees by Section 7 of the Act because it constituted an unreasonable impediment to the employees' exercise of those rights. The only significant factual difference between the two cases, which the court below deemed decisive, is that here the employer's rule against such distribution was enforced against nonemployee union organizers. Nevertheless, we believe that the principles upon which the *LeTourneau* decision rests also sustain the Board's ruling here that respondent violated Section 8 (a) (1) of the Act in barring these union organizers from distributing union literature on its parking lot.

1. In *LeTourneau* (see 324 U. S. at 797), as here, the employer's plant was located in a rural area. The employees' dwellings were widely scattered within a radius of 20 miles from the plant. Contact on public ways or on noncompany property with employees at or near the plant was limited to those employees, approximately one-

third of the working force, who were likely to walk across the public highway near the plant on their way to work or who would stop their private automobiles, busses or other conveyances on the public roads for communications.

The employer in that case adopted and enforced a rule prohibiting his employees from distributing union literature during their free time on a company-owned parking lot adjacent to his fenced-in plant. Although neither union bias nor a discriminatory purpose prompted the adoption or enforcement of the rule, the Board concluded that the prohibition constituted an unreasonable and therefore illegal impediment to the employees' exercise of the rights guaranteed by Section 7 of the Act. This Court upheld the Board's invalidation of the employer's rule as an appropriate "adjustment between the undisputed right of self-organization assured to employees under the * * * Act and the equally undisputed right of employers to maintain discipline in their establishments." 324 U. S. at 797–798.

The underlying considerations which prompted the Board and this Court to reach that conclusion are relevant and controlling here. Insuring the right of employees to organize for mutual aid is, as this Court pointed out, a "dominant purpose" of the Act. In order that employees may effectively exercise the rights guaranteed them under the Act, there must be available to the employees adequate channels of communication for the re-

ceipt and transmittal of organizational information, both oral and written. On the other hand, due recognition must be given to the employer's property and legitimate business interests. "Like so many others, these rights are not unlimited in the sense that they can be exercised without regard to any duty which the existence of rights in others may place upon employer or employee. Opportunity to organize and proper discipline are both essential elements in a balanced society." 324 U. S. at 798. Therefore, where an employer seeks to justify a rule prohibiting organizational activities on his premises, the critical issue before the Board is whether, on balance, the injury to the organizational interests of the employees which the rule imposes outweighs the injury which the employer would sustain if the rule were abrogated.

Weighing these factors, the Board found in *LeTourneau,* with the subsequent approval of this Court, that the prohibition against distribution of union literature on the company parking lot deprived the employees of an important avenue of communication, and therefore seriously impeded the exercise of their right to self-organization for purposes of collective bargaining. This finding was premised on the Board's view that, where employees' homes are widely scattered and direct contact with the employees away from the plant is extremely difficult, the area immediately adjacent to the plant is, from a practical stand-

point, the most effective place for the distribution of union literature. And as this Court held, it is no answer to suggest that union literature may be distributed elsewhere or that the plant is unlike a mining or lumber camp where the employees live and work on the employer's premises so that union organization must proceed upon the employer's premises or be seriously handicapped. See 324 U. S. at 798–799.

Against the detriment to employee interests which the parking lot prohibition imposed, the Board weighed the employer's need for such a restriction to maintain production or discipline or to protect other legitimate interests. The Board had already concluded that an employer was justified in prohibiting organizational activities during working hours,[2] and, further, that his interest in keeping a clean and orderly plant warranted a prohibition against distribution of union literature inside the plant even during non-working hours.[3] Noting, however, that "considerations of efficiency and order which may be deemed of first importance within buildings where production is being carried on, do not have the same force in the case of parking lots" (54 N. L. R. B. at 1261), the Board found that permitting distribution of union literature on the

[2] *Peyton Packing Company*, 49 N. L. R. B. 828, 843, quoted with approval in the Court's decision in the *LeTourneau* case, 324 U. S. at 803, n. 10.

[3] *Tabin-Picker & Co.*, 50 N. L. R. B. 928, 930.

parking lot during nonworking hours would impose little, if any, detriment upon the legitimate interests of the employer and that the employer remained free to protect those interests by methods which did not adversely affect the rights of employees.

Thus, the employer's assertion that the rule was necessary to prevent littering of the parking lot did not justify a prohibition against distribution, because the littering could be avoided by a rule against littering. His claim that the prohibition was necessary to prevent literature from going into the plant where it might provoke controversy which might impair efficiency and safety was deemed to be equally insubstantial, since his interest in these respects could as well be safeguarded by a rule barring the carrying of literature into the plant as by a rule directed against distribution on the parking lot. Accordingly, the Board found that, on balance, the employer's business interests were insufficient to justify the impediment which the parking lot prohibition imposed upon the effective exercise of the employees' organizational rights, and that therefore the employer's proprietary interest could properly be subordinated to the employees' interest in self-organization (54 N. L. R. B. at 1261–1262). And this Court approved the accommodation the Board had made between the competing interests.

Upon substantially identical reasoning, the Board has concluded in the instant and other

cases that a similar ban against distribution of literature by union organizers on a company parking lot likewise constitutes an unlawful interference with the employees' organizational rights if it unreasonably restricts opportunity for their exercise. Proceeding under the principles which this Court approved in the *LeTourneau* case, the Board has assessed the impact of such a restriction upon the organizational interests of the employees. It has recognized that, as this Court noted in *Thomas v. Collins*, 323 U. S. 516, 533–534, adequate opportunity for employees to receive information not only from fellow employees but also from union organizers is an indispensable attribute of the right to self-organization. *Seamprufe, Inc.*, 109 N. L. R. B. 24, 31–32. It has found that this right cannot, as a practical matter, be effectively realized unless the union has access to the employees in the area in the immediate vicinity of the plant. For union distributors face the same practical hardships which confront employee distributors in attempting to distribute literature to employees' homes scattered throughout a large city or over a wide rural area. *Seamprufe, Inc.*, 109 N. L. R. B. at 32; *Monsanto Chemical Co.*, 108 N. L. R. B. 1110, 1122.

Where the bulk of employees walk out of the plant gates onto a public street or highway so that literature can easily be distributed to them

on noncompany property in the immediate vicinity of the plant, the Board has concluded that an employer does not unduly restrict the opportunity for dissemination of organizational information by denying the union access to the employees on company property. *Newport News Children's Dress Co., Inc.*, 91 N. L. R. B. 1521, 1522; *Mooresville Mills*, 99 N. L. R. B. 572, 584.[4] Where, however, it is impossible or unreasonably difficult for a union to distribute literature to the employees on noncompany property immediately adjacent to the plant premises, as is the case here, effective distribution depends upon utilization of the employer's property. Under such circumstances, the Board is called upon to decide

[4] In *Newport News*, the employer's property measured only about 50 x 120 feet. The approximately 60 employees entered and left the premises through a single gate opening on a public street and most of them boarded buses across the street from the plant. Under these circumstances, the Board concluded that literature could easily be distributed to the employees as they walked out the gate and that the union organizer therefore was not entitled to enter upon the employer's property (91 N. L. R. B. at 1522). The facts in *Mooresville Mills* were similar (99 N. L. R. B. at 584). The issue there was whether the employer could properly prohibit union organizers from distributing literature on that part of its property extending from its gateway to the public sidewalk. The employees left the plant on foot or in cars through a single gate and many of them boarded public buses across the street from the employer's premises. The Board concluded that literature could easily be distributed to the employees as they entered and left the gate and that the employer could properly deny access to his property under the circumstances.

whether permitting such activity on company property, particularly in a nonworking area devoted exclusively to the parking of automobiles, would impose upon the employer a detriment so prejudicial to his legitimate business interests as to justify prohibition of the distribution even though it may seriously impair the employees' exercise of their rights under the Act. And it has concluded that unless undue interference with plant production or discipline would result, access to the parking lot is warranted. *Ranco Inc.*, 109 N. L. R. B. 998, 999–1009, enforced, 222 F. 2d 543 (C. A. 6), certiorari granted, No. 422, this Term; *Seamprufe, Inc.*, 109 N. L. R. B. 24, 28–33, enforcement denied, 222 F. 2d 858 (C. A. 10), certiorari granted, No. 251, this Term; *Monsanto Chemical Co.*, 108 N. L. R. B. 1110, enforcement denied, 225 F. 2d 16 (C. A. 9), pending on petition for certiorari, No. 492, this Term; *Caldwell Furniture Co.*, 97 N. L. R. B. 1501, enforced, 199 F. 2d 267 (C. A. 4), certiorari denied, 345 U. S. 907; *Carolina Mills, Inc.*, 92 N. L. R. B. 1141–1142, 1165–1166, enforced, 190 F. 2d 675, 676 (C. A. 4).

Under the principles enforced in *Le Tourneau*, the balance between the competing interests was fairly struck by the Board in the foregoing cases and in this case. The undisputed facts here show (*supra*, pp. 2–3) that practically all of respondent's 500 employees live beyond walking distance from the plant. Cf. *Le Tourneau*, 324 U. S. at

797. Forty percent of them live in Paris, Texas, which is one mile distant from the plant, and the remaining sixty percent live in widely scattered places within a radius of thirty miles from the plant. There is no public transportation to the plant other than taxicabs. More than ninety percent of the employees arrive by private car, drive directly onto company property, and park some distance from the public highway. Union efforts to distribute literature at the intersection of the highway and the driveway to the parking lot resulted in traffic jams and an ultimatum from highway authorities that such distribution was "hazardous to traffic, and must be discontinued" (R. 52, n. 2, 69–70; 219, 183, 112–115, 139–146, 157–171, 174–175, 187–199). In these circumstances, the Board found (R. 75–76), it was neither safe nor practical for the Union to distribute literature on noncompany property either in the immediate vicinity of the plant or at the homes of the employees. Accordingly, it concluded that respondent's prohibition of access to its parking lot blocked an important avenue of communication, seriously impeding the employees' exercise of their rights under the Act.

Weighing the prohibition's effect upon the employees' organizational rights against the possible detriment to employer interests, the Board found (R. 77) little, if any, prejudice to the employer in permitting distribution on the parking lot. Indeed, before the Board, respondent, in support

of its position, stood solely upon its naked property right to exercise complete dominion over its premises, and did not even claim that it would suffer any damage or inconvenience if union representatives were permitted access to the parking lot. Respondent's earlier assertion to the Union (*supra,* p. 5), that the prohibition was necessary to prevent littering of the parking lot, had previously been rejected by both the Board and this Court in the *Le Tourneau* case. As the Board there pointed out (54 N. L. R. B. at 1261), littering of parking lots is by no means as serious to an employer as would be littering "within buildings where production is being carried on." The necessity of cleaning litter from parking lots, like the necessity of cleaning it from city streets, is at most a "minor nuisance." *Martin* v. *Struthers,* 319 U. S. 141, 143. The same "obvious methods of preventing littering" (*Schneider* v. *State,* 308 U. S. 147, 162) which may result from the distribution of printed matter are open to an employer as are open to a municipality which wishes to keep its streets clean. In any event, and more important, the Board's order does not require respondent to bear even this minor burden, since it does not deprive respondent of the power to prevent littering of its parking lot. Here, as in *Le Tourneau,* the order expressly provides (R. 53) that respondent may impose reasonable regulations on the distribution to assure plant efficiency and discipline.

Moreover, the record fails to reveal any other prejudice to respondent's legitimate business interests in permitting union representatives to distribute literature on the parking lot. Thus, access to the parking lot does not entail access to the working area. This area is separated from the parking lot by a fence, and to gain admittance all persons must pass a guarded gatehouse (*supra*, p. 3). Respondent's suggestion to the court below that allowing access to the parking lot alone would require it to police the lot to prevent pilfering of the employees' automobiles raises a problem more fanciful than real. The union representatives would be present on the parking lot, not during working hours when the lot might be unprotected, but only at changes of shift when hundreds of employees are proceeding between their cars and the plant entrance and thus are in a position to safeguard their own interests. And should union representatives be on the lot when it was relatively deserted, the guard whom respondent already maintains at the gatehouse near the lot would seem to afford adequate protection. Presumably, since the parking lot is unfenced, this guard is already charged with some policing duties, and the presence of known union representatives would result in only a negligible increase to such duties. Moreover, it is, of course, clear that the Board's order does

not preclude respondent from taking effective measures to safeguard against such pilfering if it should occur.

The Board properly discounted respondent's further suggestion that solicitation by outsiders of union membership upon an employer's premises immediately before the employee enters upon the performance of his duties tends to disturb the employee and makes for strife between the employees, which would carry over into the work period, creating a production and discipline problem. To begin with, the argument is wholly inapplicable to distribution to employees leaving the plant on their way home. Moreover, even with respect to employees coming to work, distribution would have no greater disturbing effect on the work period because it took place on the parking lot instead of on noncompany property immediately adjacent to the plant premises, or because the distributors were union representatives rather than employees. Thus, what respondent's position in this respect really boils down to is that an employer should be permitted to ban all union discussion at or near his premises because it may provoke controversy among the employees. The argument is as invalid here as in *LeTourneau* and the companion case of *Republic Aviation* v. *National Labor Relations*

Board (324 U. S. 793), where it was also urged by the employers and rejected by this Court.[5]

The Board's conclusion, that respondent's parking lot prohibition constitutes an unreasonable and therefore illegal impediment to the effective exercise of the employees' organizational rights, thus rests on a careful weighing of the competing interests. Since no prejudice would result to respondent's legitimate interests from abrogation of the rule, but its continued enforcement would block an important avenue of communication between the union and the employees essential to the effective exercise of the employees' statutory rights, the Board was warranted in striking a balance in favor of the employees. This accommodation between the competing interests accords, we submit, with the guiding principles enunciated by this Court in the *LeTourneau* case.

2. The court below distinguished *LeTourneau* and held it inapplicable because the distributors there were employees while the distributors here were nonemployee union organizers. Basically, the ruling below rests on the premise that where

[5] The ruling in *Boeing Airplane Co.* v. *National Labor Relations Board*, 217 F. 2d 369, 373, 375 (C. A. 9), that an employer might temporarily prohibit even the wearing of union buttons in the plant in order to maintain discipline following the termination of a strike which had created a tense and bitter atmosphere among the employees, is obviously inapplicable. No showing of any comparable situation has been made here.

the prohibition is against nonemployees rather than employees it cannot be said that "rights of employees have been invaded or abridged" (R. 252). This premise misconceives the scope of employee rights under the Act.[6]

The statutory guarantee of self-organization, as this Court recognized in *Thomas* v. *Collins*, 323 U. S. 516, 534, includes not only the right of employees "fully and freely to discuss and be informed" concerning organizational matters, but also the "necessarily correlative" right of a "union, its members and officials * * * to discuss with and inform the employees" about the advantages of self-organization. The Court further noted (323 U. S. at 533) that the right "to organize freely for collective bargaining * * * comprehends whatever may be appropriate and lawful to accomplish and maintain such organiza-

[6] The court below, in drawing a distinction between employees and outside organizers, relied on the dissenting opinion of Mr. Justice Reed in *National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U. S. 226, 236-244, and gave it particular weight because Mr. Justice Reed wrote the opinion of the Court in *LeTourneau*. However, as we read that dissent, it does not support the distinction drawn by the court below. The basis of the dissent was that "Employment furnishes no basis for employee rights to the control of property for union organization *when the property is not a part of the premises of the employer, used in his business.* * * * Labor unions do not have the same right to utilize the property of an employer *not directly a part of the employment facilities*, that an employer has." 336 U. S. at 244 (emphasis added). The parking lot in the instant case, as in *LeTourneau*, clearly is a part of premises used by the employer in his business.

tion." As stated in the Senate Report on Violations of Free Speech and Rights of Labor (S. Rep. No. 1150, 77th Cong., 2d Sess., Part 1, pp. 4–5):

> * * * The right of self-organization and collective bargaining is a complex whole, embracing the various elements of meetings, speeches, peaceful picketing, the printing and distribution of pamphlets, news and argument, all of which, however, are traceable to the fundamental liberties of expression and assembly. So compounded, the right of self-organization and collective bargaining is fundamental, being one phase of the process of free association essential to the democratic way of life.

Obedient to the broad legislative purpose incorporated in the Act, the Board has found from the outset of its administration that "The rights guaranteed to employees by the act include full freedom to receive aid, advice, and information from others, concerning those rights and their enjoyment" (*Matter of Harlan Fuel Company*, 8 N. L. R. B. 25, 32).[7] See S. Rep. No. 573, 74th Cong., 1st Sess., p. 6; 79 Cong. Rec. 7656, 7660; H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 10,

[7] See, also, *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 104–114, 133, enforced, 116 F. 2d 816 (C. A. 6); *Matter of United Dredging Co.*, 30 N. L. R. B. 739, 748–751; *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258, 264–265; *Matter of American Cyanamid Co.*, 37 N. L. R. B. 578, 585–586, 588; *Matter of Ozan Lumber Co.*, 42 N. L. R. B. 1073, 1079–1081; *Lake Superior Lumber Corp.*, 70 N. L. R. B. 178, 179, enforced, 167 F. 2d 147 (C. A. 6).

16. Both before and after the passage of the Act it has, of course, been common practice for employees to avail themselves of the services of outside organizers.[8] The necessity for invoking such assistance, particularly in the light of modern industrial conditions, requires little elaboration. Today, as everyone knows, it is commonly true that effective union organization can be best promoted by persons who devote their full time and knowledge to the task. Cf. H. Rep. No. 1147, 74th Cong., 1st Sess., p. 10.[9] Union representatives who specialize in organization are experienced in organizing techniques and familiar with the complexities of present day labor law. Formal training in organizational methods is increasingly an indispensable prerequisite to organizing work. Unions have more and more drawn upon colleges and graduate and law schools for the knowledge and skills required by ambitious organizing campaigns. In addition, the labor movement has developed its own training schools for organizers comparable to the salesmanship training courses

---

[8] Daugherty, Carroll R., *Labor Problems in American Industry* (1938), pp. 421–422; testimony of Paul H. Douglas at Hearings before Committee on Education and Labor, U. S. Senate, on S. 2926, *To Create a National Labor Board* (73d Cong., 2d Sess.), Part 1, p. 208; O'Reilly, Harry E., "Why We Are Strong," in *American Federationist* (June 1950), p. 13.

[9] Miller, Glenn W., *Problems of Labor* (1951), pp. 88–96, 108, 121; U. S. Dept. of Labor, B. L. S. Bulletin No. 1000, *Brief History of the American Labor Movement* (1950), pp. 44–47; Peterson, Florence, *American Labor Unions* (1945), pp. 113–114.

of industry and the programs of business colleges and graduate schools.[10] Employees who are unable to tap such organizational know-how gained from long experience or specialized training are manifestly handicapped in exercising their statutory right to self-organization for purposes of collective bargaining. And to the extent that otherwise appropriate channels of communication between employees and such organizers are blocked, as here, the employees' statutory rights are diminished.

Contrary to the view of the court below (R. 251), it should not be significant, even assuming it to be correct, that the record in the instant case may be "devoid of proof that any employees * * * were or desired to be members of the Union, or were in any way connected with or interested in the distribution by the union representatives of its literature." While the record (R. 65; 133, 100) actually suggests that the court's statement was inaccurate,[11] the decisive point in any event

[10] See 73 Monthly Labor Review No. 5 (Nov. 1951), pp. 529–535, *ILGWU Approach to Leadership Training;* U. S. Dept. of Labor, B. L. S. Bulletin No. 1114, *Case Studies in Union Leadership Training* (1951–1952); Watkins & Dodd, *Labor Problems* (1940), pp. 636–641; Cooke & Murray, *Organized Labor and Production* (1940), pp. 222–233; Peterson, F., *American Labor Unions* (1945), pp. 160–168.

[11] The record (R. 133, 100) shows that prior to June 15, 1953, the first date on which union organizers attempted distribution near the plant, at least one of respondent's employees came to the Union to request organizational information, and thereafter interested employees furnished the Union with the names of other employees who might be interested.

is that employee rights are no less involved merely because organizational information is disseminated by the union on its own initiative rather than by the employees or upon their invitation. In either case, the distributors are "pursuing the same end, namely, to advise the workers at the plant of their rights under the Act and of the purported advantages of unionization" (Judge Healy dissenting in *National Labor Relations Board* v. *Monsanto Chemical Co.*, 225 F. 2d 16, 22 (C. A. 9), pending on petition for certiorari, No. 492, this Term). Where lack of interest stems from apathy or ignorance of the advantages of self-organization, employees cannot realize the benefits of the statutory guarantees unless those advantages are called to their attention. Indeed, it has been noted that "very few American employees organize themselves. They have to be organized." 93 Cong. Rec. 4432. Adequate opportunity to receive information from outside organizers is therefore both appropriate and essential for the exercise and enjoyment of the employees' right of self-organization, and therefore necessarily encompassed within its protection.

An employer may not restrict the exercise of that right solely on the ground that his property rights entitle him to exclude "trespassers." This Court has recognized that the grant to employees in Section 7 of the Act of the right to engage in concerted activities for purposes of self-organiza-

tion may properly supersede the employer's right, as property owner, to exercise absolute dominion over the property on which such activities occur. As stated in *National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U. S. 226, 232, "It is not 'every interference with property rights that is within the Fifth Amendment * * *. Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining.'" And, of course, *National Labor Relations Board* v. *LeTourneau, supra,* applies this familiar principle. So, also, in *Marsh* v. *Alabama,* 326 U. S. 501, this Court held that a state violated the Constitution by punishing criminally an individual who, contrary to the command of the corporation which owned a company town, utilized the streets of the town for the purpose of distributing religious literature. In response to the contention that the state's action was valid because the corporation, in the exercise of its property rights over the streets, could exclude trespassers, the Court said (326 U. S. at 505–506):

> We do not agree that the corporation's property interests settle the question * * *. Ownership does not always means absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who

use it. Cf. *Republic Aviation Corp.* v. *Labor Board,* 324 U. S. 793, 798, 802; n. 8.

Here, the considerations which led respondent to provide a parking lot for its employees were obviously the necessity of attracting employees to a plant in a rural area, not served by public transportation, and bordered by a highway on which parking was prohibited (R. 66, 68; 102–103, 113–114, 224). Having opened up its property for employee use for its own advantage, respondent cannot exclude as trespassers persons whose presence is necessary for an effective exercise of the employees' statutory rights. The necessity for protecting the statutory rights of employees who use the plant parking lot, no less than the necessity for protecting the constitutional rights involved in *Marsh* v. *Alabama,* affords ample basis for superseding the "dominion" which the employer-owner of a parking lot may exercise over his property.[12] Indeed, even the court below recognized (R. 251, 252), as both the Board and the courts of appeals have generally held, that where employees live on company property the employer's proprietary interest may properly be subordinated to the employees' statu-

[12] The *Marsh* case cannot be distinguished on the ground that the sidewalks there were freely used by the general public. This Court expressly refused to disturb the holding of the Supreme Court of Alabama that the corporation had not dedicated its streets to the public, and that the distributor of the literature was therefore a trespasser (326 U. S. at 505, n. 2).

tory rights so as to permit outside organizers to have access to them for the purpose of assisting them in the exercise of these rights.[13] The premise on which such cases stand is that access is necessary to the effective exercise of the employees' rights. By the same token, the employer's proprietary interest in the instant case may properly be subordinated to the employees' interest in self-organization for purposes of collective bargaining. And, as we have shown, the Board was fully justified in concluding that access to the employees at the plant property is necessary if they are to make effective use of the statutory guarantees.[14]

---

[13] *Matter of Harlan Fuel Co.*, 8 N. L. R. B. 25, 31–32, 63 (employees living in company town denied access to union representative); *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 105–106, 133 (same); *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258, 270 (employees living in company-owned logging camp denied access to union representatives); *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147 (C. A. 6) (same). Cf. *Matter of Waterman Steamship Corp.*, 7 N. L. R. B. 237, enforced, 309 U. S. 206, 224–226 (employees living aboard ship denied access to union representatives); *Matter of Cities Service Oil Co.*, 25 N. L. R. B. 36, 57 (same), enforced as modified, 122 F. 2d 149, 152 (C. A. 2); *Matter of Richfield Oil Co.*, 49 N. L. R. B. 593 (same), enforced as modified, 143 F. 2d 860 (C. A. 9).

[14] The decision of the Seventh Circuit in *Marshall Field and Company* v. *National Labor Relations Board*, 200 F. 2d 375, relied on by the court below, affords little support for its conclusion. That case did not involve the right of union organizers to enter upon a company parking lot, but rather their asserted right to enter the employer's store for the pur-

3. The view of the court below that the employer's proprietary interest must be deemed to be paramount except where the ban against access by outside organizers is discriminatorily motivated or where the employees work and live on company property does not withstand analysis.

To be sure, plant rules which discriminate against union solicitation or distribution of union literature (*e. g.*, rules which permit solicitation for all causes except unions, or which permit distribution of all types of literature except union) may by that token alone be rendered invalid.[15] But it by no means follows that proof of nondis-

---

pose of engaging in union activity. Since the record in that case disclosed that the union organizers had opportunities to communicate with the employees at some locations both in, and at the entrances to, the store, the Seventh Circuit concluded that there was no evidentiary support for the Board's finding that the ban against further access to the employees elsewhere inside the store substantially impeded the employees' exercise of their statutory rights (200 F. 2d at 379, 382). Recognizing, moreover, that employer interests must be accorded greater weight within the buildings where production is being carried on, the court differentiated between access to the store proper and access to company property outside the store. The court sustained (*id.* at 380, 382) that portion of the Board's order which precluded the employer from barring nonemployee union organizers from the private alleyway owned by the employer and separating its store buildings, despite the fact that the employees did not live on company property.

[15] *E. g.*, *National Labor Relations Board* v. *William Davies Co.*, 135 F. 2d 179, 181 (C. A. 7), certiorari denied, 320 U. S. 770 (discriminatory promulgation of no-solicitation rule); *National Labor Relations Board* v. *Denver Tent & Awning Co.*, 138 F. 2d 410, 411 (C. A. 10) (discriminatory promul-

crimination necessarily establishes the legality of such a rule. Just as a state law "certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike" (*Murdock* v. *Pennsylvania*, 319 U. S. 105, 115), so an employer's rule against distribution may violate the statutory injunction against interference even though it classifies union literature along with types of printed matter which have no specific statutory protection and bans the distribution of all alike. The "test of interference, restraint and coercion under § 8 (1) of the Act [now Section 8 (a) (1).] does not turn on the employer's motive * * *." *National Labor Relations Board* v. *Illinois Tool Works*, 153 F. 2d 811, 814 (C. A. 7). In Section 8 (a) (1), Congress

---

gation and enforcement of no-solicitation rule): *Bonwit Teller, Inc.* v. *National Labor Relations Board*, 197 F. 2d 640 (C. A. 2), certiorari denied, 345 U. S. 905 (discriminatory enforcement of no-solicitation rule); *National Labor Relations Board* v. *American Furnace Co.*, 158 F. 2d 376, 379 (C. A. 7) (discriminatory enforcement of a no-distribution rule); *Westinghouse Electric & Mfg. Co.* v. *National Labor Relations Board*, 112 F. 2d 657, 659–660 (C. A. 2), affirmed, 312 U. S. 660 (discriminatory refusal to permit one of two contesting unions to use company premises for holding meetings); *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 225–226 (discriminatory refusal to issue shipboard passes to union representatives); *National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U. S. 226 (discriminatory refusal to permit a union to use a meeting hall in a company town).

was concerned with safeguarding employees from conduct which abridges their exercise of guaranteed rights, whatever the motive for the infringement.

For purposes of the present case, this point was settled in *LeTourneau*, where "no union bias or discrimination by the company" (324 U. S. at 797) prompted the rule prohibiting employees from distributing literature on the parking lot. In holding the rule invalid as an unreasonable impediment to self-organization, despite the absence of any discriminatory purpose on the part of the employer, this Court conceived the basic issue to be one of "working out an adjustment between the undisputed right of self-organization assured to employees under the * * * Act and the equally undisputed right of employers to maintain discipline in their establishments." *Id.* at 797–798. In this frame of reference, the absence of a discriminatory motive on the part of the employer in denying union organizers access to employees on a plant parking lot is irrelevant.

Nor can the alternative criterion of the court below, whether the employees live on company property, be determinative of the validity of the prohibition against access to the parking lot. Whether access by outside organizers to employees away from the area adjacent to the plant is difficult or impractical because the employees work and live on company-owned property or because, as here, they live in widely scattered communities,

the issue in either case is whether the denial of access to them on the employer's premises constitutes such a serious impediment to the employees' exercise of their statutory rights as to require subordinating the employer's proprietary interest to the employees' organizational rights. In both types of cases, the Board's function is "to determine what in fact would be the prejudice to the interests of the employer in permitting access * * *, and what would be the benefit to the employees, and whether the benefit prevailed over the prejudice, or the prejudice prevailed over the benefit." *National Labor Relations Board* v. *Lake Superior Lumber Corp.*, 167 F. 2d 147, 152 (C. A. 6).

On this point, again, the *LeTourneau* decision is controlling here. There, as the Court pointed out, it could not "properly be said that there was evidence or a finding that the plant's physical location made solicitation away from company property ineffective to reach prospective union members" (324 U. S. at 798). Nor was the plant "like a mining or lumber camp where the employees pass their rest as well as their work time on the employer's premises, so that union organization must proceed upon the employer's premises or be seriously handicapped" (324 U. S. at 799). Although other means or avenues for disseminating union literature away from the plant area were not foreclosed, the Court nevertheless concluded that the prohibition against distribu-

tion on the company parking lot was an unreasonable impediment to the employee's exercise of their statutory rights and hence invalid.

The place of work, or its immediate vicinity, has been recognized to be the "most effective place for the communication of information and opinion concerning unionization" (*Bonwit Teller, Inc. v. National Labor Relations Board*, 197 F. 2d 640, 645 (C. A. 2), certiorari denied, 345 U. S. 905). The Board's conclusion that union organizers, if they are to have adequate opportunity to communicate organizational information to employees, must be able to distribute literature on the plant parking lot, if it is not feasible to do so on the public property immediately adjacent to the plant, is consistent with this acknowledged fact and follows the underlying premise in *Le-Tourneau*.

Where distribution of pamphlets is aimed at the general public—as in the case of religious tracts, political campaign literature, advertisements, or appeals for charity—"perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people" (*Schneider* v. *State*, 308 U. S. 147, 164). But labor organizations, which seek to reach a particular group, can effectively utilize door-to-door distribution only where the employees' homes are almost contiguous—as, for example, in company towns—or in communities where the employees' homes are clustered about the plant.

Where, as here, the employees' homes are widely scattered, obvious practical hardships attend home distribution to any large number of them.[16] In the absence of a list of names and addresses, distribution on a door-to-door basis or through the mails is both impractical and ineffective. Even assuming that such a list could be obtained—manifestly a more difficult procedure for nonemployee union organizers than for employee distributors already familiar with their fellow employees—the cost and time involved in door-to-door distribution may well be prohibitive. And distribution through the mails, if not equally costly and time consuming, is at any rate a poor substitute for personal contact, affording no opportunity for the distributor to answer the questions which the literature is bound to evoke. Concrete illustration of the difficulties of distribution away from the plant may be found in the experience of the Union in the instant case. The Union was able to locate and mail literature to only approximately one-fifth of respondent's 500 employees, and, in order to visit the comparatively few homes tracked down, had to travel to communities 11, 21, 26, and 30 miles from respondent's plant (R. 52, n. 3, 67–68; 182, 99–102). In short, door-to-door distribution of union literature is normally so impractical that labor organizations must rely heavily upon access to the

[16] See Barbash, Jack, *Labor Unions in Action* (1948), p. 26.

employees in the vicinity of the plant if they are to get printed matter into the hands of employees.[17]

Other channels for communicating organizational information to employees away from the plant are equally inadequate or ineffective. Comprehensive telephone communication, like home distribution, requires a list of names and addresses, and depends, in addition, upon the employees' having telephones and being at home to receive calls. Only by the most persistent effort was it possible for the Union in the instant case to reach even slightly more than half of respondent's employees by this means; only 60 percent of the employees had telephones (R. 68; 211–212). Chance meetings with identifiable employees on the street cannot be equated with systematic distribution of union literature at or near the plant.

[17] See Weyforth, William O., *The Organizability of Labor* (1917), p. 16; Walsh, G. Raymond, *C. I. O. Industrial Unionism in Action* (1937), pp. 69, 131, 169–170; Brooks, R. R., *When Labor Organizes* (1938), p. 10; Brooks, R. R., *As Steel Goes* (1940), p. 117 and accompanying photograph; Barbash, Jack, *Labor Unions in Action* (1948), p. 26; International Brotherhood of Teamsters, *Some Notes for Trade Union Organizers* (1955), pp. 11, 16–17; Cooke & Murray, *Organized Labor and Production* (1949), p. 46. See also, *Karp Metal Products Co., Inc.*, 42 N. L. R. B. 119, 134–135, enforced, 134 F. 2d 954 (C. A. 2); *Revlon Products Corp.*, 48 N. L. R. B. 1202, 1207–1208, enforced, 144 F. 2d 88 (C. A. 2); *Wells-Lamont-Smith Corp.*, 42 N. L. R. B. 440, 448; *Kohen-Ligon-Folz, Inc.*, 36 N. L. R. B. 1294, 1299–1300, enforced, 128 F. 2d 502 (C. A. 5); *Paragon Die Casting Co.*, 27 N. L. R. B. 878, 881, 883, 886.

Moreover, union meetings away from the plant area are usually poorly attended by employees tired from their day's work and faced with added travel or confronted with the responsibilities and demands of family life.[18]

Even if alternative devices were more effective than they actually are, there would remain the highly significant point that, as the Board pointed out (R. 74), "speech is not the only mode of communication, nor is it sufficient that this channel alone be free. Effective organization requires the use of printed literature and of application and membership cards, and these modes of communication are also protected by the Act." The Act, like the Constitution, "embraces the right to distribute literature, *Lovell* v. *Griffin*, 303 U. S. 444, 452, and necessarily protects the right to receive it." *Martin* v. *Struthers*, 319 U. S. 141, 143; see also *Jamison* v. *Texas*, 318 U. S. 413, 416. This Court has had occasion to note that "pamphlets have proved most effective instruments in the dissemination of opinion" (*Schneider* v. *State*, 308 U. S. 147, 164; *Lovell* v. *Griffin*, 303 U. S. 444, 452), and that their distribution is important to the cause of employee organization (*Martin* v. *Struthers*, *supra*, at 145–146). Both the nature

[18] For these reasons, attendance at union meetings even after employees are organized is notoriously poor. See Kopald, S., "Democracy and Leadership," in Bakke & Kerr, *Unions, Management and the Public* (1948), pp. 180–181; Note, 61 Yale L. J. 1066, 1074–1075 (1952); Millis and Montgomery, *Organized Labor* (1945), pp. 246–247.

of the subject matter and the availability of those to be reached make the plant premises "natural and proper places" for the distribution of union literature (*Schneider* v. *State*, 308 U. S. 147, 163). Under the National Labor Relations Act, as under the Constitution, "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Ibid.*

4. Finally, the assertion of the court below (R. 251–252) that the Board's order would compel respondent to "institute a discriminatory application in favor of a particular union of its non-distribution rule," and jeopardize the neutrality required of it by Section 8 (a) (2) of the Act, must be rejected. The Board's order directs respondent to cease and desist from enforcing its no-distribution rule, not only against representatives of the Union immediately involved, but also against "any other labor organization" (R. 53). The contention that merely permitting distribution on the parking lot would constitute "support" of a union in violation of Section 8 (a) (2) was also pressed in this Court by the employer in *LeTourneau* and rejected without discussion.[19] See also *National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U. S. 226, 230–231. The mere fact that an employer does not interfere with distribution of union literature

[19] See briefs for the *LeTourneau Co.*, pp. 19–20 and for the Board, pp. 39–44, No. 452, October Term, 1944.

constitutes no evidence of favoritism or support toward the labor organization involved. Only if the employer interferes with similar activities of a competing labor organization, or himself instigates organizational activities, or affirmatively cooperates with a labor organization to increase the effectiveness of its proselytizing by lending to it an appearance of employer sponsorship does his conduct take on the color of illegality. Permitting employees to receive literature from union organizers on the parking lot constitutes aid to organization only in the negative sense that any noninterference with the exercise of organizational rights amounts to "aid." The result here is no different, and no less exempt from the proscription of the Act, than the "aid" to organization in the *Republic* and *LeTourneau* cases.

II

The Board's order is valid and proper

In the court below respondent urged that the Board's order was too broad in its scope and for that reason should not be enforced as it stood. The order, in relevant part, requires respondent to cease and desist from "Prohibiting the distribution of union literature by union representatives on its parking lot and alongside the walkways from the gatehouse to the parking lot, and drive * * *" and from "Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exeriese" of their rights under the Act. (R. 53–54). While

the court below announced (R. 250) that it regarded the order as too broad in so far as it enjoins respondent from engaging in "any like or related acts", it found it unnecessary to deal further with the point because of its disposition of the case. Since, however, respondent is urging here again that the order is too broad,[20] and since a remand of the case in the face of the expressed view of the court below would result in a modification of the order, we turn to this issue.[21]

As this Court has pointed out, "It is a salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts. * * * Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 436. Cf. *Federal Trade Commission* v. *Beech-Nut Co.*, 257 U. S. 441, 456. A rule which would require a Board order to be limited solely to the specific unfair labor practice found and preclude the Board from enjoining "like or related" conduct would, in the words of this Court, "invite easy evasion" and "give tremendous impetus to [a] program of experimentation with disobedi-

[20] Opposition to Petition for Certiorari, pp. 12–13.

[21] The question was reserved in the petition for certiorari, p. 2, n. 2.

ence of the law * * *." *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187, 192, 193.

The Board's order in the instant case comports with the foregoing principles. Having found that respondent's prohibition against the distribution of union literature on its parking lot constituted an unfair labor practice, the Board properly directed respondent, with reasonable specificity, to rescind its rule and to refrain from encroaching upon the employees' statutory rights by like or related acts. Moreover, the record in the instant case furnishes additional warrant for the order. Respondent's ban against the distribution of union literature on its parking lot applies not only to outside organizers but also—contrary to the specific ruling in *LeTourneau*—to employees as well (R. 68–69; 203, 202–206, 186–187, 215). In these circumstances, the order appropriately guards against the threat of future violations similar to that found. *Express Publishing Co., supra,* at 436.

CONCLUSION

For the reasons stated, the judgment of the court below should be reversed and remanded to the court below with directions to enforce the order of the Board.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

RUTH V. REEL,
Attorney,
National Labor Relations Board.

NOVEMBER 1955.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are as follows:

FINDINGS AND POLICIES

SECTION 1. * * *

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

* * * * *

SEC. 2. When used in this Act—

* * * * *

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, * * *

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 * * *.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such

person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint * * *.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act * * *.